

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

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KAH 08-00395

PRESENT: MARTOCHE, J.P., CENTRA, FAHEY, AND PINE, JJ.

THE PEOPLE OF THE STATE OF NEW YORK EX REL.
BERNARD PITTS, PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

DAVID UNGER, SUPERINTENDENT, ORLEANS
CORRECTIONAL FACILITY, RESPONDENT-RESPONDENT.

D.J. & J.A. CIRANDO, ESQS., SYRACUSE (JOHN A. CIRANDO OF COUNSEL), FOR
PETITIONER-APPELLANT.

ANDREW M. CUOMO, ATTORNEY GENERAL, ALBANY (VICTOR PALADINO OF
COUNSEL), FOR RESPONDENT-RESPONDENT.

Appeal from a judgment (denominated order) of the Supreme Court,
Orleans County (James P. Punch, A.J.), entered December 28, 2007 in a
habeas corpus proceeding. The judgment dismissed the petition.

It is hereby ORDERED that the judgment so appealed from is
unanimously affirmed without costs.

Memorandum: We reject the contention of petitioner that Supreme
Court erred in dismissing his petition for a writ of habeas corpus.
Petitioner's contention in support of the petition with respect to
double jeopardy could have been raised on direct appeal or by a
postjudgment motion pursuant to CPL article 440 (see *People ex rel.*
Pitts v McCoy, 11 AD3d 985, lv denied 4 NY3d 705; *People ex rel.*
Hammock v Meloni, 233 AD2d 929, lv denied 89 NY2d 807). Contrary to
petitioner's contentions, the petition was properly dismissed in
response to respondent's motion (see CPLR 404 [a]; see also *People ex*
rel. Goude v La Vallee, 42 AD2d 648), and petitioner was afforded
meaningful representation by the attorney assigned to represent him in
connection with the habeas corpus petition (see generally *People v*
Benevento, 91 NY2d 708, 712).

Entered: March 20, 2009

JoAnn M. Wahl
Clerk of the Court